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MICHAEL W. DOBINS
CLERK, U.S. DISTRICT COURT

AFFIDAVIT OF VINCENT JOHN TENUTO

Vincent John Tenuto states the following under oath:

1. My name is Vincent John Tenuto. I am the same person that was charged, pleaded guilty, and was convicted of knowingly transporting through interstate commerce, by means of a computer, an image of child pornography, in violation of 18 U.S.C. § 2256(8)(A), in the criminal case numbered 1:06-cr-00484-01. I am now the movant in a motion under 28 U.S.C. § 2255 that I am filing pro se this same day. I am an inmate at Federal Satellite Low, Elkton, in Lisbon, Ohio, and I have first-hand knowledge of the facts that follow.
2. I pleaded guilty to count one and entered a plea agreement with the government because I was guilty of the offense. I was and continue to be devastated by what I did, especially in light of my responsibilities as a father to my own two daughters. I accept full responsibility for my conduct and in no way mean to minimize my responsibility through the § 2255 motion or this affidavit.
3. One of the reasons I so quickly agreed to the government's offer was the understanding I got from the investigators and both my attorneys John Bickley and John Donlevy that I was likely to get probation for the offenses. I was led to believe that was a realistic or even probable result of the case. I only learned that was not true as the case progressed and after I pleaded guilty. That does not mean I have any desire to withdraw my plea. I simply want to let the Court know what was told to me. I certainly was not promised probation.
4. I know that, when I pleaded guilty, the government believed that I should receive increases to my sentence; and I know both Mr. Bickley and Mr. Donlevy believed that I should not

receive those increases. When I ended up getting those increases at the sentencing hearing, I was very disappointed. Some of that disappointment was offset when Judge Hibbler departed downward. But I had been hoping that Judge Hibbler was going to depart downward from the range listed in the presentence report down to probation or a number of months significantly shorter than 96 months.

5. There were many facts about me, the case, how I became so depressed, what drew me to pornography, and why I did what I did that I spoke to Mr. Donlevy about but that was not talked about in Court. I have been gathering that information with the help of my family, and I hope to be presenting that information to the Court very soon.
6. After the sentencing hearing, I spoke to my family about how I wanted to appeal. One of them spoke to Mr. Donlevy about appealing.
7. I was out on bond after sentencing. A couple of days after the hearing, I called Mr. Donlevy on the phone. I spoke to him and asked him directly about appealing. I specifically mentioned appealing the increase that the government asked for and received, the increases that Mr. Donlevy had argued against at sentencing. He told me it would be a waste of time and money. Although I was pressing for information about what an appeal could do or what it would be about, he was not interested in talking about appealing. He said an appeal would mean I could get more time.
8. Eight days after the sentencing hearing, on May 10, 2007, Mr. Donlevy wrote a letter to me. I am attaching a copy of that letter. In the letter, Mr. Donlevy told me that I had no solid grounds for an appeal, including the increases I wanted to appeal. Even though he was my

paid attorney, Mr. Donlevy told me that I could get another attorney if I wanted to appeal. He told me I had until May 14, 2007 to file an appeal. I believe I received his letter on May 11, or 12, 2007. Thus, I did not think I had time to get an attorney to file an appeal just two or three days later. I did not understand that I only needed to file a one-page notice of appeal by the deadline.

Further Affiant sayeth naught.

Pursuant to 28 U.S.C. 1746, I, Vincent John Tenuto, declare under penalty of perjury that the foregoing is true and correct.

Executed on this 24th day of April 2008.



Vincent John Tenuto

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May 10, 2007

Via Federal Express

Mr. Vincent J. Tenuto
360 Neville Dr. - Apt. 4
Grayslake, IL 60030

Re: *United States v. Vincent Tenuto*
Case No. 06 CR 684

Dear Vincent:

I enclose the judgment order entered in your case by Judge Hibbler. Please read this document carefully and call me should you have any questions. The statement on page 2 that you are to report to the probation office within 72 hours of sentencing is incorrect and should read within 72 hours following *release from imprisonment*.

Today I spoke with **Christa Brown**, your Pretrial Services Officer. She confirmed my interpretation of page 2 of the judgment order. She was most helpful and said she would probably be notified first regarding your assigned place of detention and will contact you as soon as she receives word, which she thought would probably be in the early part of June. Last Monday I sent you a copy of my e-mail letter to the Bureau of Prisons requesting your placement at FCI Oxford. I hope we get good news on that request.

On the subject of your period of confinement, I enclose the United States Code (18 U.S.C.A. § 3624) covering that subject. You will note that you will receive up to 54 days of good behavior time credit at the end of each year that you serve. The final year will be pro-rated. Thus, you will serve approximately 85% of the 96 month term, assuming good behavior throughout. Your actual sentence will be computed by the Designation and Sentence Computation Center (DSCC). (See enclosed *bop.gov* website extract.)

Ms. Brown explained that when you have 6 months left on your sentence, after allowance for all good time credits, you will be moved to a halfway house for the

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remainder of your sentence. After that you will begin your 5 year period of supervised release, and you could be excused from some portion of the full period.

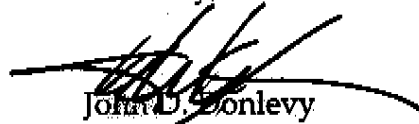
Effective November 1, 2007, the United States Sentencing Commission will greatly expand the circumstances which a federal prison sentence may be reduced. I enclose the new rules for your review, as they could apply to your situation. Let me know if you have any questions.

Finally, you mentioned the possibility of an appeal. I see no solid grounds for an appeal, and that includes Judge Hibbler's rulings on our double-counting objections to the 2 level increases for distribution and use of a computer. However, you may wish to consult with other counsel on the appeal issue. Any such appeal must be filed no later than **May 14, 2007**.

Please call me if you have any questions.

Regards.

Sincerely,



John D. Donlevy

JDD:kbs
(w/encls.)

My name is Vincent John Tenuto. I am currently incarcerated at the Federal Satellite Low, Elkton, in Lisbon Ohio. My case number is 06-CR-484-1. I am filing a 2255 motion and an affidavit. I will be using the prisons legal mail system to send this on April 25th of 2008. I am filing on the grounds that I feel I received ineffective assistance of counsel.

Pursuant to 28 U.S.C. 1746, I, Vincent John Tenuto, declare under penalty of perjury that the foregoing is true and correct.

